

Drave v Beckens

2006 NY Slip Op 30172(U)

August 31, 2006

Supreme Court, Wayne County

Docket Number: 0056278/2006

Judge: Dennis M. Kehoe

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK
SUPREME COURT COUNTY OF WAYNE

ORIGINAL

E. RICHARD DRAVE,

Plaintiff,

vs

JULIE R. BECKENS and MICHAEL G.
BECKENS

Defendants

DECISION
AND
ORDER

Index No. 56278

Christopher S. Ciaccio, Esq.
Attorney for Plaintiff

Kenney Shelton Liptak Nowak, LLP
Eric C. Genau, Esq.
Attorneys for Defendants

The above-named Defendants have moved for an order pursuant to CPLR §3212 granting them summary judgment and dismissing the Plaintiff's Complaint. The Plaintiff has opposed the motion in its entirety.

The Plaintiff has commenced the instant action against the Defendants, seeking money damages for personal injuries which he allegedly suffered as a result of a motor vehicle accident, which occurred on June 8, 2004, on Route 88 in the Town of Sodus, New York. The

Plaintiff was traveling northbound on Route 88 on his motorcycle, following an automobile owned by the Defendant Michael Beckens and operated by the Defendant Julie Beckens. It appears that the Plaintiff was in the process of attempting to pass the Defendant's minivan in a passing zone, as the Defendant attempted to make a left hand turn into a driveway. The motorcycle struck the automobile in the southbound lane. The Plaintiff has no recollection as to how the accident occurred.

The Defendant Julie Beckens argues that the deposition testimony of the witnesses establishes as a matter of law that she was not negligent, and that her actions were not a proximate cause of the accident or the Plaintiff's injuries. She maintains that she activated her left turn signal, and that she did so at a time so as to give the Plaintiff sufficient notice of her intention. The deposition testimony of non-party witness Russell Brown, who was traveling behind the Defendant, also affirms that the Defendant used her turn signal. His testimony also indicates that the Plaintiff, who passed Mr. Brown's vehicle, may have been speeding and following the Defendant's vehicle too closely.

However, the Plaintiff relies on the deposition testimony of Eric DeWilde, a friend who was following him on his own motorcycle on Route

88 at the time of the accident. Mr. DeWilde testified that the Defendant did not signal and did not apply her brakes until the last moment. (The Plaintiff also attempts to rely on a prior statement made by Mr. Brown to a private investigator, which is allegedly inconsistent with his deposition testimony, but as that statement is not in admissible form, the Court cannot consider it at this time.)

The Defendant argues that Mr. DeWilde's testimony does not contain any material which creates an issue of fact as to a lack of negligence on the part of the Defendant. However, having reviewed the testimony, the Court finds that there are issues of credibility which must be left to the trier of fact. "As a general proposition, summary judgment should not be granted where there is any doubt as to the existence of factual issues ... or where the issue is arguable.... (citations omitted) Thus, the Plaintiff in a negligence action will generally be entitled to summary judgment only in cases in which there is no conflict at all in the evidence, the Defendant's conduct fell far below any permissible standard of due care, and the Plaintiff's conduct either was not really involved... or was clearly of exemplary prudence in the circumstances. (citations omitted)" (*Chilberg v Chilberg*, 13 AD3d 1089 (4th Dept, 2004)). Given the possible questions of

comparative negligence raised by the papers, the Court finds that summary judgment is inappropriate in this instance.

The Defendant's motion is therefore denied.

This Decision constitutes the Order of the Court.

Dated: August 31, 2006
Lyons, New York



Honorable Dennis M. Kenoe
Acting Supreme Court Justice